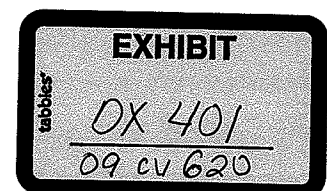


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 **O loughlin, Johanna (Vol. 01) - 04/26/2010**

1 CLIP (RUNNING 00:26:13.762)

 DIRECT EXAMINATION ...

JO002 31 SEGMENTS (RUNNING 00:26:13.762)



1. PAGE 4:22 TO 5:04 (RUNNING 00:00:17.333)

22 DIRECT EXAMINATION
23 BY MS. HUGHEY:
24 Q. Good morning, Ms. O'Loughlin. Could you state
25 your full name for the record.
00005:01 A. Johanna G. O'Loughlin.
02 Q. You are the former vice-president and general
03 counsel of Fisher Scientific; is that correct?
04 A. That is correct.

2. PAGE 5:15 TO 5:19 (RUNNING 00:00:18.500)


15 Q. How long were you at Fisher?
16 A. About 16 years.
17 Q. What years were you there?
18 A. I started in 1980 and I left in about March or
19 April of 1996.

3. PAGE 6:23 TO 7:05 (RUNNING 00:00:23.222)

23 Q. Now, when you worked at Fisher Scientific in
24 early 1990s, were you responsible for certain
25 legal filings?
00007:01 A. Occasionally.
02 Q. Did you have responsibility for things like
03 trademark applications?
04 A. Generally under my oversight that would be the
05 case.

4. PAGE 7:18 TO 8:04 (RUNNING 00:00:46.565)

18 Q. Can you please turn to what has been marked as


 **D062-0031 -**



19 Lawson Exhibit 40, L0260585 to L0260624. It
20 appears to be entitled "Service Mark,
21 Principal Register, Fisher RIMS."
22 A. I have that.
23 Q. What is this document?
24 A. It says that it is just as you described it, a
25 service mark, principal register. I really
00008:01 don't know beyond that how to describe it.
02 Q. What is this document dated?
03 A. It says registered May 31, 1994 on the title
04 line.

5. PAGE 8:23 TO 9:12 (RUNNING 00:00:40.800)

23 Q. Can you please turn to page L0260591?

 **D062-0007 -**




24 A. Yes.
25 Q. Do you see at the bottom of the page the
00009:01 signature block for Fisher Scientific Company?
02 A. Yes.
03 Q. Do you see it says, "Johanna G. O'Loughlin,

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04 Vice-president, general counsel"?
05 A. I do.
06 Q. That is you, correct?
07 A. That is.
08 Q. Is that your signature in the signature block?

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09 A. It is.
10 Q. Could you please turn to the next page, page
11 L0260592?
12 A. I have it.

6. PAGE 9:19 TO 9:25 (RUNNING 00:00:13.166)

19 Q. And you signed this on behalf of Fisher
20 Scientific?
21 A. I did.
22 Q. Were you working for Fisher Scientific that
23 day that is dated below that, the 26th day of
24 April 1993?
25 A. I was.

7. PAGE 11:07 TO 11:18 (RUNNING 00:00:30.667)

07 Q. Could you please turn to the next page

 D062-0020 -




08 L0260593?
09 A. I have it.
10 Q. Do you see the bottom of the page where it
11 says, "Services" and then to the right there
12 is a paragraph?
13 A. I do.
14 Q. Underneath that it says Fisher RIMS?
15 A. It does.
16 Q. And then above that you see "Use in Commerce,
17 August 1992"?
18 A. Yes.

8. PAGE 12:03 TO 12:15 (RUNNING 00:00:33.933)

03 Q. Now you see next to it services it says,
04 "Computer-based services for processing
05 requisitions, entering purchase orders,
06 maintaining inventory records, transferring
07 related reports and data to other computers
08 and generating documents for picking, packing,
09 shipping and receiving requisitioned and
10 ordered products." Do you see that paragraph?
11 A. I do.
12 Q. Was it your understanding that those are the
13 services that were being used by Fisher RIMS
14 in August of 1992?
15 A. It is.

9. PAGE 13:08 TO 14:07 (RUNNING 00:01:07.867)

 D062-0028 -




08 Q. Could you turn to L0260594, the next page.
09 A. Okay.
10 Q. Again, do you see on this page where it says,
11 "Used in Commerce, August 1992"?
12 A. I see that.
13 Q. And below it has services and it has a similar
14 paragraphs talking about those services?

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15 A. Right.
16 Q. Is it your understanding that this Fisher RIMS
17 mark was being used in Commerce in 1992?
18 A. It is.
19 Q. Could you please turn to the next page,

 D062-0008 -

20 L0260595?
21 A. I have that.
22 Q. What is this document?
23 A. It appears to be the cover of a commercial
24 brochure entitled Fisher RIMS.
25 Q. And you see at the bottom where it says, "A
00014:01 revolutionary electronic Requisition and
02 Inventory Management System"?
03 A. Yes.
04 Q. Was it your understanding that the Fisher RIMS
05 was a requisition and inventory management
06 system?
07 A. It was.

10. PAGE 14:12 TO 15:10 (RUNNING 00:00:57.933)

12 Q. You see that this page has what looks to be a

 D062-0009 -


13 series of bullet points describing Fisher
14 RIMS?
15 A. I see that.
16 Q. Do you see the bullet point one says,
17 "Consolidates all supplier activity, including
18 third-party and administrative purchases"?
19 A. I see that.
20 Q. Do you see bullet point four that says,
21 "Allows flexible remote requisitioning by
22 formatted screen, telephone, fax or bar code
23 scanning"?
24 A. I see that.
25 Q. Do you see bullet point it looks like maybe
00015:01 bullet point eight. It says,
02 "Cross-references your stock numbers and all
03 your supplier numbers."
04 A. Yes.
05 Q. And then bullet point 15, do you see that? It
06 says "Utilizes file transfers and EDI"?
07 A. I see that.
08 Q. And bullet point 17 says, "Utilizes OS/2
09 operating system, relational database."
10 A. Right.

11. PAGE 15:15 TO 15:17 (RUNNING 00:00:08.400)

15 Q. Is it your understanding that the Fisher RIMS
16 system had these features?
17 A. In general, yes.

12. PAGE 15:18 TO 16:02 (RUNNING 00:00:37.800)

18 Q. To the best of your knowledge this document
19 starting at page L0260595 to L0260608 -- to
20 the best of your knowledge was this document

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21 used in Commerce at the time this application
22 was filed?

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23 A. It is the same answer I gave before. To the
 24 best of my knowledge that would be the case.
 25 The facts are accurately recorded. If this
 00016:01 was attached to it, that was the document that
 02 was in Commerce -- used in Commerce.

13. PAGE 16:10 TO 16:12 (RUNNING 00:00:06.738)

10 Q. When you were working at Fisher, did you ever
 11 work with Fisher on its 10-Ks?
 12 A. I don't really recall doing that.

14. PAGE 16:15 TO 16:24 (RUNNING 00:00:40.933)

15 Q. Can you tell me what a 10-K is?
 16 A. The 10-K is the annual report that public
 17 companies are required to file with the
 18 Securities and Exchange Commission?


 D212 -



19 Q. Can you please turn to what has been marked as
 20 Lawson Exhibit No. 42, L0343548 to L0343586.
 21 A. I have that.
 22 Q. What is this document?
 23 A. This is a form 10-K for Fisher Scientific
 24 International for, I guess, for 1993.

15. PAGE 18:02 TO 18:25 (RUNNING 00:00:55.800)

02 Q. Can you turn to the next page, L0343550?

 D212-0003 -



03 A. I have that.
 04 Q. The first full paragraph, the one that starts,
 05 "Computerized order-entry system," do you see
 06 that paragraph?
 07 A. I do.
 08 Q. Do you see where it is says, "Information on
 09 all 100,000 products offered in the Fisher
 10 Catalog can be obtained through Fisher RIMS,
 11 the company's newest and most powerful
 12 electronic order-entry system, which provides
 13 paperless purchasing, receiving, billing and
 14 product distributions." Do you see that
 15 sentence?
 16 A. I do.
 17 Q. Is it your understanding that that is what the
 18 Fisher RIMS product was?
 19 A. Yes, it is.
 20 Q. Do you see the next sentence, it says, "Fisher
 21 RIMS facilitates just-in-time delivery and
 22 third-party purchasing, contributing to
 23 supplier consolidation for its customers"? Is
 24 it your understanding that that is also true
 25 of the Fisher RIMS system?

16. PAGE 19:13 TO 20:17 (RUNNING 00:01:26.767)

13 Q. Is this paragraph consistent with your
 14 understanding of the Fisher RIMS system?
 15 A. It is.
 16 Q. Is it consistent with your understanding of
 17 the Fisher RIMS system that was on sale in
 18 1992?
 19 A. The Fisher RIMS system that I was aware of,
 20 yes. I think this is an accurate depiction of
 21 my understanding of its capabilities.

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22 Q. The first sentence talked about the Fisher
 23 Catalog. What is the Fisher Catalog?
 24 A. I don't know what it is today but at the time
 25 it was still a printed catalog that was really
 00020:01 for purposes of ordering. It was a
 02 hard-backed, huge catalog. Fisher was kind of
 03 famous for it because it was so comprehensive
 04 and Fisher was then and maybe still is the
 05 leading laboratory supply company.
 06 It was sort of a bible for ordering, but
 07 they recognized that the electronic age
 08 required them to also be able to facilitate
 09 ordering in all kinds of electronic formats so
 10 that those same items that were in the
 11 hardback Fisher Catalog were being made
 12 available to customers through computerized
 13 means.
 14 Q. I see. And you said the Fisher Catalog had
 15 information about products. Did it have
 16 descriptions of the products?
 17 A. It did, and photos.

17. PAGE 19:19 TO 19:21 (RUNNING 00:00:09.472)

19 A. The Fisher RIMS system that I was aware of,
 20 yes. I think this is an accurate depiction of
 21 my understanding of its capabilities.

18. PAGE 21:03 TO 21:08 (RUNNING 00:00:13.167)

03 MS. HUGHEY: The first sentence, third
 04 line, "which provides paperless purchasing,
 05 billing and product distribution."
 06 THE WITNESS: I think it is the paragraph
 07 that begins with the italicized title
 08 "Computerized Order-Entry Systems."

19. PAGE 21:10 TO 22:08 (RUNNING 00:01:20.433)

10 A. My understanding is this. The company sold to
 11 many -- almost all laboratory -- scientific
 12 laboratories in the industry. At big
 13 companies where there were lots of them, they
 14 needed to run an inventory supply room, the
 15 customer had to run its own inventory supply
 16 room. They had to order goods and receive
 17 them in their inventory supply room and handle
 18 all of the purchasing that way and then
 19 distributing it among out to their various
 20 component parts.
 21 That was an expense and required a lot of
 22 record maintenance and so what this is
 23 referring to are those activities that
 24 customers had to engage in and the
 25 company's -- Fisher's attempt to provide them
 00022:01 with a product that would streamline that for
 02 them and allow them to do it much more cheaply
 03 and simply by using an inventory management
 04 system which would accommodate third-party
 05 products as well as Fisher's product and allow
 06 them to essentially run their own storeroom
 07 for difficultly that is what that is all
 08 referring to.

20. PAGE 23:11 TO 24:11 (RUNNING 00:01:15.167)

11 Q. You can put this document aside. Can you


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12 please turn to what has been marked as Lawson
13 Exhibit 43, L034357 to L0343631.
14 A. Okay.
15 Q. What is this document.
16 A. It is another 10-K I think for the following
17 year. It has a date stamp of March 31, 1994
18 for Fisher Scientific International.
19 Q. Please turn to page L0343589, the third page


 D213-0003 -



20 in this document.
21 A. Yep.
22 Q. Do you see the paragraph there that starts
23 "Computerized order-entry systems"?
24 A. I do.
25 Q. It appears to be similar, if not exact, to the
00024:01 paragraph in the earlier 10-K; is that
02 correct?
03 A. Yes, it does.
04 Q. Is it, again, consistent with your
05 understanding of the Fisher RIMS system that
06 was on sale in 1992?
07 A. It is.
08 Q. Was it Fisher's policy from 1992 to 1994 to
09 provide accurate verified information in its
10 10-K filing to the SEC?
11 A. It was.

21. PAGE 24:19 TO 24:21 (RUNNING 00:00:13.134)

19 Q. Could you please turn to what has been marked

 D211 -




20 as Lawson Exhibit 41 L0343632.
21 A. Yes.

22. PAGE 24:24 TO 25:10 (RUNNING 00:00:36.034)

24 Q. What is this document?
25 A. It looks like an annual report, the 1994
00025:01 annual report at Fisher Scientific
02 International.
03 Q. What is an annual report?
04 A. Public companies typically create an annual
05 report for shareholder consumption that is --
06 that doesn't contain all of the required
07 elements of a 10-K but contains the same
08 financial -- general financial information and
09 a little more description of the company for
10 the benefit of the shareholders.

23. PAGE 25:23 TO 25:24 (RUNNING 00:00:09.300)

 D211-0004 -



23 Q. Could you please turn to L0343635.
24 A. Okay.

24. PAGE 27:21 TO 28:05 (RUNNING 00:00:20.266)

21 Q. "Introduced in 1992 as Fisher Rims,
22 Requisition and Inventory Management System,
23 now widely used by our major customers." Do

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24 you see that sentence?
 25 A. I do.
 00028:01 Q. Is it your understanding that this is the same
 02 Fisher RIMS that we were talking about before
 03 when we were discussing the trademark
 04 application?

 -KED211-0004 - Clear Attached Exhibit D211-0004



05 A. It is.

25. PAGE 29:24 TO 31:20 (RUNNING 00:02:01.900)

24 Q. It is safe to say that you are not a computer
 25 scientist, correct?
 00030:01 A. That is correct.
 02 Q. And you are not an electrical engineer?
 03 A. No, I am not.
 04 Q. And the technology involving this RIMS system
 05 that we have been talking about toady, this
 06 electronic sourcing system that is the subject
 07 of this litigation is not really your strong
 08 suit? Fair to say?
 09 A. I didn't think I was asked a lot of technology
 10 questions. I thought I was just asked
 11 features and benefits questions of a product.
 12 Q. You are absolutely right. You weren't asked a
 13 lot of technology questions. I am just trying
 14 to establish that that is not your area of
 15 expertise?
 16 A. What is not? IT, technology, no, it is not my
 17 area of expertise.
 18 Q. That is all I wanted to establish. You were
 19 asked about these annual reports and I
 20 understood you to say that that wasn't one of
 21 your responsibilities as a general counsel
 22 during the time period we are talking about
 23 from 1992 to 1994; is that correct?
 24 A. You are correct.
 00031:01 Q. Essentially you were asked basically to
 02 confirm that statements made in these annual
 03 reports to your knowledge were not inaccurate,
 04 fair?
 05 A. Right, because they conform to my
 06 understanding of the product that the company
 07 was purveying.
 08 Q. Understood. Are you aware that this RIMS
 09 system that we are talking about was patented?
 10 A. I just have no present recollection of that.
 11 Q. I am sorry. You have no present recollection
 12 of it?
 13 A. I just don't have any present recollection of
 14 it.
 15 Q. Fair enough. I understand. The RIMS patent
 16 issued or was applied for back in 1993. That
 17 is 17 years ago. That is a long time to go
 18 back. You wouldn't consider yourself an
 19 expert on the functionality, features and
 20 capability of the RIMS system, would you?
 20 A. No.

26. PAGE 32:09 TO 32:20 (RUNNING 00:00:26.666)

09 Q. All I am suggesting is that inventors of the
 10 RIMS systems are more knowledgeable as to its
 11 features and capabilities as you are; isn't
 12 that right?
 13 A. I would say they are more knowledgeable but

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14 that doesn't mean that I would credit their
 15 testimony. You asked me a question about
 16 whether I would rely on it and I would be
 17 interested to know what they thought about it
 18 and they are more expert than I am. I don't
 19 purport to be an expert on it. I
 20 authenticated my signature.

27. PAGE 34:04 TO 35:11 (RUNNING 00:01:39.854)

04 Q. Are you aware that during your tenure as
 05 general counsel Fisher Scientific filed for an
 06 application on the RIMS system?
 07 A. You mean a patent application or a
 08 trademark --
 09 Q. A patent application.
 10 A. I just do not recall. We filed lots of
 11 applications for different products and I
 12 just don't remember that one specifically.
 13 The lawyer who worked for me was a patent and
 14 trademark lawyer. He took the laboring for
 15 all of those things.
 16 Q. That is Mr. Dornburg, correct?
 17 A. Alan Dornburg.
 18 Q. And you are aware that during the time of your
 19 tenure as general counsel Fisher Scientific
 20 applied for a patent for an electronic
 21 sourcing system and method in August of 1994?
 22 A. I just don't have any recollection of specific
 23 applications.
 24 Q. Fair enough. Was the company in the habit of
 25 filing for patent applications that it thought
 00035:01 were not new, non-obvious and useful?
 02 A. You know, that -- I would say phrased that way
 03 that sounds pretty cynical. I am sure they
 04 applied for things where they weren't sure it
 05 would be granted or weren't sure whether they
 06 would have to narrow their claims at a later
 07 date and all of those sorts of things but I
 08 think because of the expense involved there
 09 would be some expectation that they would
 10 achieve their goal of getting some kind of
 11 protection.

28. PAGE 35:15 TO 35:24 (RUNNING 00:00:28.663)

15 Q. Were you aware that there were three patents
 16 granted by the patent office for the
 17 electronic sourcing system?
 18 A. I was not.
 19 Q. Would the company expend resources seeking to
 20 obtain intellectual property protection for
 21 inventions that it thought was worthless? Is
 22 that part of the policy of the company?
 23 A. Well, I can't speak for others but it doesn't
 24 make much sense to me.

29. PAGE 36:09 TO 41:15 (RUNNING 00:06:16.683)

09 Q. Understood, but as general counsel at the time
 10 from the -- just focussing on the 1992 to 1996
 11 period you weren't authorizing Mr. Dornburg to
 12 file applications for patents at the patent
 13 office that the company thought had no value,
 14 correct?
 15 A. I wasn't, but I don't know if I was involved
 16 in the patent applications or not since you
 17 haven't shown me anything with my signature on

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18 it.
 19 Q. I am not asking you about what you had your
 20 signature on. As general counsel, was it the
 21 policy of the company to file applications to
 22 the patent office that the company thought had
 23 no value? Yes or no?
 24 A. I would not have executed such a policy, no.
 25 Q. I didn't think you would. All right. Let me
 00037:01 ask you about some of these exhibits if you
 02 have them in front of you. Let's start out
 03 with -- first you were asked some questions
 04 about Exhibit No. 40, which is this trademark

 D062 -


05 application that bears your signature in
 06 various places. Do you recall that?
 07 A. I do.
 08 Q. Do you have it in front of you?
 09 A. I do.
 10 Q. Let's just skip over some of the stuff and go
 11 right to the brochure. You called it a
 12 marketing brochure. Do you recall that? That
 13 starts at page 595 at the bottom right.

 D062-0008 -


14 A. Okay.
 15 Q. It is a marketing brochure, correct?
 16 A. That is what it looks like.
 17 Q. Is it not a technical document, right, like a
 18 manual that would help you understand the
 19 functioning of the Fisher RIMS system,
 20 correct?
 21 A. I assume not. It looks like a commercial
 22 brochure to me.
 23 Q. For consumption of potential --
 24 A. Customers.
 25 Q. -- customers of the RIMS system, correct?
 00038:01 A. That is my understanding.
 02 Q. You were asked some questions about some
 03 bullet points that appear at page -- it ends

 D062-0009 -



04 with 598. Do you recall that?
 05 A. I do.
 06 Q. You have no independent knowledge as to
 07 whether or not the RIMS system in this period
 08 of time say in 1992 or so had that
 09 functionality, correct?
 10 A. I actually think that it had this genre of
 11 functionality. That is what it was designed
 12 to do. It was designed to take over. I know
 13 what you are asking me but my understanding
 14 was that the RIMS system was designed to take
 15 over the inventory storeroom of large
 16 customers and to manage it from the beginning
 17 to the end, from purchase to the lab bench for
 18 the customer and that it needed features like
 19 these to be effective. I have no specific
 20 knowledge of each one of these things in
 21 detail, no.
 22 Q. Fine. Thank you. You just confirmed for me
 23 on page 598 the documentation that we are
 24 looking at with these bullet points Ms. Hughey
 25 asked you about, there is no mention at all

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00039:01 about catalogs, correct?
 02 A. There may not have --
 03 Q. Does the word catalog appear there?
 04 A. Does the word catalog appear, no, but that is
 05 what they would be accessing would be the
 06 catalog system.
 07 Q. The Fisher Catalog?
 08 A. I think it was intended to be able to manage
 09 other items otherwise it wouldn't have been
 10 able to replace --
 11 Q. Does it have any discussion of the word
 12 catalog anywhere on this page, yes or no? Can
 13 you answer that fairly?
 14 A. I would have to look. It says, "Consolidates
 15 all supplier activity including third-party
 16 and administrative purchases." It doesn't
 17 have the word catalog, but that is my
 18 understanding.
 19 Q. Fair enough. How many iterations did the
 20 Fisher RIMS system go through?
 21 A. I don't know.
 22 Q. The inventors say it went through many
 23 iterations. Do you know any of the trade
 24 names that the iterations went through?
 25 A. I don't know.
 00040:01 Q. Do you know how the features and functionality
 02 changed during the period of time from 1992 to
 03 1995, for example?
 04 A. I do not.
 05 Q. Let's focus on Exhibit No. 43 for a moment if

 D213 -


06 we could. That was the annual report that you
 07 said you had no responsibility for?
 08 A. Right. I have it.
 09 Q. The page that ends with the page No. 589?

 D213-0003 -

10 A. Okay. I have it.
 11 Q. You were asked about this entry italicized
 12 "Computer order-entry system," do you see
 13 that?
 14 A. I do.
 15 Q. Can you tell me where in this paragraph it
 16 discusses the capabilities searching multiple
 17 vendor catalogs?
 18 A. I don't see it there.
 19 Q. Fair enough. Next paragraph, the Fisher
 20 Catalog. Is there any other catalog other
 21 than the Fisher Catalog mentioned in that
 22 paragraph?
 23 A. The paragraph is entitled "The Fisher
 24 Catalog," so, no.
 25 Q. Fair enough. Is it Exhibit No. 42 was also an

 D212 -

00041:01 annual report. I took these out of order.
 02 A. That is okay. I have it.
 03 Q. The page that ends 550.

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04 A. I have it.
 05 Q. Computerized order-entry systems. The only

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06 mention there is the Fisher Catalog, correct?
07 A. Yes, it is.
08 Q. The next paragraph, which you have informed me
09 is entitled The Fisher Catalog, it doesn't
10 discuss any other vender catalogs in that
11 paragraph, correct?
12 A. It doesn't, because this is a general
13 description of the company's business and not
14 everybody used computerized order-entry
15 systems.

30. PAGE 41:19 TO 41:22 (RUNNING 00:00:12.366)

19 Q. You didn't have any opportunity to review the

 **-KED212-0003 - Clear Attached Exhibit D212-0003**



20 Fisher RIMS patent which is 5712989 that was
21 issued in January of 1998, correct?
22 A. No.

31. PAGE 43:01 TO 43:25 (RUNNING 00:01:04.233)

00043:01 Q. All right. Fair enough. Let's just get this
02 clear on the record. Independently you have
03 no knowledge one way or the other whether
04 these statements are truthful or not?
05 A. Right. I don't have any detailed knowledge.
06 I only know generally what I described to you
07 about Fisher Catalog, about RIMS and about the
08 company's practices. The only thing I can say
09 for certain is that looks like my signature on
10 the trademark application and my expectation
11 would have been then and it is now that it was
12 properly prepared.
13 Q. I understand that, so just focusing on the
14 annual reports right now. I just want to make
15 sure it is clear on the record. When you were
16 asked about these statement, your response is
17 that it was the policy of the company not to
18 make misleading statements in annual reports,
19 fair enough?
20 A. That would be my expectation, yes.
21 Q. As you sit here today in 2010, you have no
22 independent knowledge one way or the other
23 whether these statements are true or not,
24 correct?
25 A. Correct.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:26:13.762)